

(2003) 07 JH CK 0050

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 4145, 4146 and 4147 of 2002

Jitendra Kumar, Kamal Narayan Prasad and Sudershan Kumar and Others APPELLANT

Vs

Jharkhand Intermediate Education Council Rameshwaram and Others RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2003) 3 JCR 258

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M. Sohail Anwar and Altaf Hussain, for the Appellant; Anil Kumar Sinha, A.G., for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal. J.

1. In all these writ petitions common question of law and facts are involved and, therefore, these writ petitions have been heard and disposed of by this common order.

2. The petitioners have prayed for quashing the office orders dated 23.2.2002 "and 26.2.2002, issued under the signature of respondent No. 3 the Secretary, Jharkhand Intermediate Education Council, Ranchi whereby the petitioners have been relieved from their duties who were working on the post of Assistant/Routine Clerk.

3. These petitioners were initially appointed in the year 1994 on casual basis as Assistant/Routine Clerk by the Bihar Intermediate Education Council on consolidated wages of Rs. 1500/1200, which was subsequently increased to Rs. 3500/2400. The petitioners were allotted the work of examination/registration relating to South Chotanagpur Division Through allotment chart issued by

Respondent No. 3 dated 3.12.2001. It is contended that in the last examination due to mistake of the printer, in some centers, the question papers kept in the sealed packet were found shortage which was clearly a mistake of the printer. Similarly the answer books were also supplied by the same printer and were found missing. Although the petitioners were diligent in the discharge of their duty but all of a sudden the petitioners received the office order dated 26.2.02 issued by Respondent No. 3 by the order of the Administrator whereby several allegations were made against the petitioners and they were relieved from the work of Assistant/ Routine Clerk with immediate effect.

4. Mr. M.S. Anwar, learned counsel appearing for the petitioners assailed the impugned order as being illegal, capricious and mala fide. Learned counsel submitted that admittedly the petitioners were appointed on casual basis in 1994, but after the creation of the State of Jharkhand and Jharkhand Intermediate Education Council the petitioners were given pay scale vide office order dated 7.1.2002. Not only that in 1999 posts were advertised and petitioners were interviewed. Thereafter a panel was prepared for regularization of the petitioners. Learned counsel submitted that in any view of the matter the impugned order is punitive in nature and therefore, liable to be quashed on the ground of violation of principles of natural justice. Learned counsel relied upon the decision of the Supreme Court in the case of V.P. Ahuja Vs. State of Punjab and Others, .

5. On the other hand Mr. A.K. Sinha, learned Advocate General appearing on behalf of the Intermediate Council firstly submitted that the status of the petitioners was nothing but a casual employee and merely because pay scale was given to them, they cannot acquire the status of regular employee. Learned counsel submitted that in any view of the matter the services of the petitioners has not been terminated rather they have been relieved from the Council. Learned counsel submitted that as a matter of fact Jharkhand Intermediate Council was not competent to terminate their services for the reason that the petitioners are the employee of Bihar Intermediate Education Council and that is the reason the petitioners have been relieved from the services of Jharkhand Intermediate Council. In this connection, learned counsel relied upon decision of the Supreme Court in the case of Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao, and Mukesh Bhai Chhotabhai Patel Vs. Joint Agriculture and Marketing Advisor, Govt. of India and Others, .

6. Before appreciating the rival contention of the learned counsels it would be necessary to consider the admitted case of the parties. The petitioners were initially appointed in the year 1994 as Assistant/Routine Clerk on daily wages basis by the Bihar Intermediate Education Council, Patna and since then the petitioners were continuously working on the said post. Before the creation of the State of Jharkhand, the petitioners were posted in the Ranchi office of Bihar Intermediate Education Council. After the creation of the State of Jharkhand the petitioners continued on the said post. In 2002 by office order dated 7.1.2002,

the petitioner's services were absorbed in the Jharkhand Intermediate Education Council as ad hoc employees and they were given pay scale. A copy of the office order dated 7.1.2002 has been annexed as Annexure 1 to the writ application. The Intermediate Council in their counter affidavit have stated that the Council conducted the Intermediate examination 2002 for the first time and in these examinations error like shortage of questions papers in many subjects at all the centers were found. It was informed by the Secretary that it happened because of the mistakes and negligence of the petitioners. Since the petitioners did not discharge their duty sincerely the Council decided to relieve them from the services.

7. In the light of admitted facts stated hereinabove the only question that falls for consideration is whether the impugned order relieving the petitioners from services is punitive in nature or an order simplicitor. If it is held that the order is punitive in nature and not an order simplicitor then the said order having not complied with the requirements of principles of natural justice would be violative of Article 14 of the Constitution of India. The impugned order reads as under.

"SRI JITENDRA KUMAR, AKASHMIK DINCHARYA LIPIK JHARKHAND INTERMEDIATE SHIKSHA PARISHAD, RANCHI KE PARIKSHA AWADHI MEIN RAHNE, GIRIDHAR INTER COLLEGE, DALTONGANJ KE KALA SANKAYA MEIN KRAMANK 30101 SE 30114 TAK (14 CHARTRON) EVAM VIGYAN SANKAYA MEIN KRAMANK 10134 SE 10142 TAK (09 CHATRON) KUL .23 CHATRON KA SAMEKIT VTVARNI EVAM PARIKSHA PRAPATRA DATE CENTRE NAHI BHEJNE KE PHALSWAROOP ROLLLIST MUDRIT NAHIN HONE TATHA LOHARDAGE, GARHWA EVAM PALAMAU ZILA KE LIYE, GALAT NUMERICAL BANAKAR PARIKSHAE BADHIT KARNE KE AAROP MEIN, YAH NIRNAY LIYA GAYA KI INKE JAISE ANUSASHANHEEN, AWISHWASI EVAM SWEKSHACHARI KARAMCHARI KE SEVA KI AWASHAYAKTA AKASHMIK ROOP MEIN BHI PARISHAD KARYALAYA MEIN NAHIN MAIN, ATA: INHE DINANK 21.02.2002 SE JHARKHAND INTERMEDIATE SHIKSHA PARISHAD, RANCHI SE KARYAMUKT KIYA JATA HAL"

8. From bare reading of the aforesaid order it is manifest that the same has been passed by way of punishment. In para 25 of the counter affidavit of the Council it is stated that the Administration has acted fairly and punished the petitioners for the serious fault committed by them. In my opinion therefore, even if temporary employees like the petitioners are relieved from duty by imputing serious charges the principles of natural justice is to be followed. It is well settled that procedure prescribed for depriving a person of his livelihood must meet the challenge of Article 14 and such law and procedure would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rules or orders affecting the civil right or result in civil consequences would have to answer the requirement of Article 14 of the Constitution.

9. In the case of V.P. Ahuja Vs. State of Punjab and Others, the Supreme Court observed that a probationer like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those

services be terminated in a punitive manner without complying with the principles of natural justice.

10. In the case of Nar Singh Pal Vs. Union of India and Others, their lordships of the Supreme Court observed :

"The appellant, no doubt was a casual labour but as observed by the Tribunal, he has acquired temporary status with effect from 1.10.1989. Once as employee attains the "temporary" status, he becomes entitled to certain benefits on of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other articles dealing with services under the Union of India : A perusal of the impugned order by which the services of the appellant were terminated indicates that since the appellant has beaten one Mahender Singh with an iron rod and had also bitten him with his teeth on 20.4.1992 at 8.00 p.m., while the said Mahendra Singh was on duty as Gateman, Tax Bhawan. Agra, therefore, his services were terminated with immediate effect. Thus the services were terminated on account of the allegation of assault made against the appellant. This Court on 24.1.2000 passed the following order.

Learned counsel appearing for the respondents is granted Six weeks time to seek instruction whether regular departmental proceedings were taken in this matter or not."

11. The decision of the Supreme Court referred by the learned Advocate General does not apply to the fact of the instant case. In Hindustan Shipyard Ltd. (Supra) the Supreme Court was considering the question of regularization and held that Court can only direct the ad hoc appointees to be considered for regularization by a selection committee constituted in accordance with rules for direct appointment cannot itself direct them to be regularized. In the case of Mukesh Bhai Chota Bhai Patel (Supra) the Supreme Court observed that regularization has to be considered in the light of the scheme framed by the department. It is not automatic regularization as contended for.

12. Further contention of the learned Advocate General is that since the services of the petitioners have not been terminated rather they have been relieved from their duty from Jharkhand Intermediate Council cannot be accepted for the reason that the petitioners have been relieved on certain charges and, therefore, it cannot be treated to be a simple order of retrenchment. The respondents have admitted that the impugned order has been passed by way of punishment and, therefore, in my opinion the impugned orders having been passed without holding any inquiry cannot be sustained in law.

13. For the aforesaid reasons these writ petitions are allowed and the impugned orders passed by the respondent council are set aside.